a pronouncement of Saudi Arabian law by the sovereign itself. In this regard, the Delaware Supreme Court's suggestion that a designee of the Saudi Arabian government should appear before the trial court for questioning is patently absurd, an affront to the Kingdom's sovereignty, and a sharp departure from principles of international comity. The circumstances of this case warranted no more suspicion (or need for cross-examination of the Kingdom's representative) than would a statement issued on behalf of the United States by an Assistant Secretary of State for a foreign audience. Both are deserving of respect on their face, not wariness or obloquy.

Second, Respondents' accusation that the Ministry manipulated principles of Saudi Arabian law because of the Kingdom's financial stake in Petitioner was baseless and, in any event, provided the Supreme Court of Delaware no reason to reject the Ministry's statement out of hand. The Kingdom's commitment to the fundamental precepts of Islamic law and its sovereign interest in ensuring that foreign tribunals correctly interpret its law transcend the mere commercial dispute at issue in this case, and no pecuniary interest outweighs the Kingdom's fidelity to the *Shari'a.* Moreover, the Kingdom's financial stake in Petitioner does not disqualify the Ministry as an authoritative source on Saudi Arabian law, just as the fact that the United States might stand to benefit financially is no reason to refuse to accord deference to an interpretation of statutory law by one of its agencies. *See, e.g., United States v. Cleveland Indians Baseball Co.*, 532 U.S. 200, 219–220 (2001) (according "substantial judicial deference" to IRS regulation regarding taxation of back wages); *Indep. Petroleum Ass'n of Am. v. DeWitt*, 279 F.3d 1036, 1040 (D.C. Cir. 2002) ("[S]elf-interest alone gives rise to no automatic rebuttal of deference."); *Doolin Sec. Sav. Bank v. FDIC*, 53 F.3d 1395, 1400–01, 1405–06 (4th Cir. 1995) (deferring to FDIC's interpretation of organic statute in assessing insurance premiums despite plaintiff's charge that the Commission has "an institutional

pecuniary interest in the outcome of the assessment process"); *see also In re Oil Spill by the Amoco Cadiz*, 954 F.2d 1279, 1312–13 (7th Cir. 1992) (deferring to foreign government's interpretation of its own laws as authorizing the government's recovery of oil-spill cleanup costs). In both instances, the sovereign should be accorded deference *qua* sovereign, not because of some altruistic or disinterested motive, and courts should presume regularity in the discharge of official sovereign functions.

Third, the Supreme Court of Delaware was obligated to perform a *de novo* review of the trial court's conclusions of Saudi Arabian law. In this regard, it simply makes no sense for a court that properly should have consulted and cited *any* source that would have helped it reach a correct interpretation of the Kingdom's laws to ignore the Ministry's statement, which was at the very least a persuasive exposition of Saudi Arabian law from a highly qualified source. *See, e.g., United States v. McNab*, 331 F.3d 1228, 1241 (11th Cir. 2003) ("Among the most logical sources for the court to look to in its determination of foreign law are the foreign officials charged with enforcing the laws of their country."). The Ministry of Justice is, of course, intimately familiar with the laws of Saudi Arabia, as well as with how the Kingdom's judges would apply those laws to specific circumstances. Indeed, a central function of the department that researched and produced the Ministry's statement is to survey the decisions of both the Supreme Judicial Council and the courts of intermediate appeal, synthesize the principles of law enunciated by those tribunals, submit to the Supreme Judicial Council its "opinions on the legal principles on which such judgments were based, as to their consistency with justice in light of changing circumstances and conditions," and "[p]repare such research projects as may be requested by the Ministry of Justice." The Law Of The Judiciary, Royal Decree No. M/64, art 89 (Saudi Arabia 1975), *available at* http://www.moj.gov.sa/Documentations/The_Law_of_the_JU

DICIARY.doc. In light of the Supreme Court of Delaware's express recognition of "the distinctive characteristic of Saudi law" that hampered the trial court's attempt to define the elements of *ghasb*, the Court's refusal even to consider the views of a source so steeped in the Kingdom's laws and traditions worked an injustice and marked an abdication of the judicial function. Pet. App. at 43a–45a. As it happened, the Supreme Court of Delaware did not even accord the Ministry's statement the consideration federal and state courts give to law review articles and other scholarly works as a matter of course.

Fourth, the Supreme Court of Delaware's facile suggestion that the Kingdom could have at once avoided the procedural infirmities in this case and protected its interest in ensuring the correct application of its laws by interjecting itself into the litigation from the outset is manifestly unreasonable. Sovereign nations cannot be expected to monitor and become enmeshed in all disputes involving the application of their laws throughout the world. Saudi Arabia, for its part, does not have the ability to keep abreast of, and play an active role in, the multitudinous disputes requiring a foreign tribunal to resolve issues of Saudi law.[6] As a practical matter, the Kingdom, like other nations, must rely on parties to bring to its attention significant errors of law; and often, as here, it will not be clear that consequential errors have been

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[6] *See, e.g., Forzley v. AVCO Corp. Elecs. Div.*, 826 F.2d 974, 979 (5th Cir. 1987) (Saudi law governed employment agreement); *McGhee v. Arabian American Oil Co.*, 871 F.2d 1412, 1422 (9th Cir. 1989) (Saudi law governed claims of defamation, intentional infliction of emotional distress, fraud, and conversion); *Nat'l Group for Commc'ns and Computers, Ltd. v. Lucent Techs. Int'l, Inc.*, 331 F. Supp. 2d 290, 292 (D.N.J. 2004) (Saudi law governed telecommunications construction contract); *CPS Int'l, Inc. v. Dresser Indus., Inc.*, 911 S.W.2d 18, 28–30 (Tex. Ct. App. 1995) (Saudi law governed claims of tortious interference, civil conspiracy, misappropriation of trade secrets, and breach of fiduciary duty).

made until just before or even after trial. The fact that it is often not until appeal that the Kingdom (or any sovereign) has occasion to offer its views should not vitiate the respect and deference those views deserve. Just as this Court often recognizes the importance of requesting the views of the Solicitor General even though the United States did not appear as a party below, the Supreme Court of Delaware should have considered the Kingdom's views when submitted on appeal. As the Petition demonstrates, principles of international comity required no less.

CONCLUSION

For the foregoing reasons, the Kingdom of Saudi Arabia respectfully urges this Court to grant the Petition for Certiorari.

Respectfully submitted,

MAUREEN E. MAHONEY
Counsel of Record
J. SCOTT BALLENGER
NATHANIEL A. VITAN
LATHAM & WATKINS LLP
555 Eleventh Street, N.W.
Suite 1000
Washington, D.C. 20004
(202) 637-2200

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IN THE

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SAUDI BASIC INDUSTRIES CORPORATION,
Petitioner,

v.

MOBIL YANBU PETROCHEMICAL COMPANY, INC., AND EXXON CHEMICAL ARABIA, INC.,
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Delaware

BRIEF IN OPPOSITION

KENNETH C. JOHNSON
EXXON MOBIL CORPORATION
800 Bell Street, Suite 1686J
Houston, Texas 77002
(713) 656-8159

ANDREW S. POLLIS
DAVID J. MICHALSKI
HAHN LOESER & PARKS LLP
3300 BP America Building
200 Public Square
Cleveland, Ohio 44114
(216) 621-0150

JAMES W. QUINN
DAVID LENDER
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
(212) 310-8000

GREGORY S. COLEMAN
Counsel of Record
CHRISTIAN J. WARD
WEIL, GOTSHAL & MANGES LLP
8911 Capital of Texas Hwy.,
Suite 1350
Austin, Texas 78759
(512) 349-1930

WILLIAM J. WADE
RICHARDS, LAYTON & FINGER
One Rodney Square
Wilmington, Delaware 19899
(302) 651-7700

ELIZABETH J. SHER
PITNEY HARDIN LLP
200 Campus Drive
Florham Park, New Jersey 07932
(973) 966-6300

Counsel for Respondents

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20001

CORPORATE DISCLOSURE STATEMENT

Respondent Exxon Chemical Arabia, Inc. is wholly owned by Exxon Overseas Corporation, which is wholly owned by Exxon Mobil Corporation. Exxon Mobil Corporation has no parent corporations and no publicly held corporation holds 10% or more of its stock. Respondent Mobil Yanbu Petrochemical Company, Inc. is wholly owned by Mobil Petroleum Company, Inc., which is wholly owned by Mobil International Petroleum Corporation, which is wholly owned by Mobil Corporation, which is wholly owned by Exxon Mobil Corporation.

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MOBIL YANBU PETROCHEMICAL COMPANY, INC., AND EXXON CHEMICAL ARABIA, INC.,
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Delaware

BRIEF IN OPPOSITION

The Court has no jurisdiction to consider and should therefore deny the petition because it improperly seeks review of a purely state-law procedural ruling on grounds that were never presented to the Delaware courts and on which there is no conflict of authority. No court, state or federal, has ever held that federal common law grounded in international comity supersedes all state and federal procedural rules governing the process by which foreign law is determined in litigation.

Petitioner Saudi Basic Industries Corporation (SABIC) and its controlling owner-amicus, the Kingdom of Saudi Arabia, seek to impose a system under which a foreign-sovereign-owned litigant can trump a valid judgment on appeal merely by asserting the sovereign's post hoc view that the trial court

applied foreign law incorrectly. After losing at trial and appealing to the Delaware Supreme Court, SABIC attempted to supplement the appellate record by procuring and submitting a nonauthenticated "study" prepared by unknown persons for the sole purpose of critiquing the superior court's judgment. This "study" was prepared at SABIC's request and sent by a low-level functionary within the Saudi Ministry of Justice. The Delaware Supreme Court correctly rejected that attempt as procedurally improper on state-law grounds.

To evade the obvious conclusion that the Delaware Supreme Court's state-law decision is not subject to review by the Court, SABIC attempts to construct a broad federal common-law rule that would require state and federal appellate courts to "receive" and "respectfully consider," Pet. 20, 22, any document claimed to represent the views of a foreign government regardless of provenance or procedural noncompliance.

The difficulty for SABIC is that no court—state or federal—has ever stated such a rule. Thus, SABIC can articulate no conflict of authority for the Court to resolve. No court has ever held that SABIC-created federal common law, see Pet. 22 ("must, at a minimum, respectfully consider"), supersedes trial courts' discretion in considering foreign-law materials under rule 44.1. See FED. R. CIV. P. 44.1 ("may consider"). The petition asks this Court to extend SABIC's purported mandatory rule to include evidentiary materials submitted for the first time on appeal and declare that it supplants all state-court rules governing the determination of foreign law. SABIC did not even argue that rule in the Delaware Supreme Court. Instead, it argued unsuccessfully that the court had discretion under state law to permit SABIC's unorthodox appellate evidentiary filing. Now SABIC is left asserting a nonexistent conflict over a phantom federal common-law theory that it never raised below.

JURISDICTION

The Court does not have jurisdiction under 28 U.S.C. §1257(a) because the challenged ruling by the Delaware Supreme Court is grounded solely in independent and adequate state-law grounds.

STATEMENT OF THE CASE

On July 24, 2000, the next business day after a mediation in a case filed by SABIC in federal court in New Jersey, SABIC filed this case against respondents Mobil Yanbu Petrochemical Company, Inc. (Mobil) and Exxon Chemical Arabia, Inc. (Exxon) (collectively, ExxonMobil) as a declaratory judgment action in the Superior Court of Delaware. Pet. App. 1a-2a. This tactic, a blatant act of forum shopping, was designed to keep SABIC's bad-faith conduct out of the New Jersey case and to secure the benefit of the Delaware statute of limitations.[1] The Delaware trial court chosen by SABIC delineated the elements of the Saudi tort of *ghasb* (usurpation) following exhaustive consideration of expert reports, testimony, and independent examination. Only after the jury found SABIC liable for usurping hundreds of millions of dollars from ExxonMobil and awarded compensatory damages did SABIC begin to argue that its chosen forum was effectively incapable of applying Saudi law.

I. FACTUAL BACKGROUND

SABIC was created in the 1970s by amicus curiae the Kingdom of Saudi Arabia and is now 70% owned by the Kingdom. In 1980, SABIC and Mobil formed a 50/50 joint venture, Yanbu Petrochemical Co., or Yanpet. Pet. App. 3a. In the same year, SABIC and Exxon also formed a 50/50 partnership, Al-Jubail Petrochemical Co., or Kemya. *Ibid.*

[1] See Pet. App. 16a ("SABIC purposefully chose this forum. And all indications strongly suggest that they chose this forum to obtain a shorter statute of limitations." (quoting trial court ruling)).

The ultimate purpose of both joint ventures was to manufacture polyethylene in Saudi Arabia. *Ibid.*

"A critical, carefully negotiated premise of both joint ventures was that the profits enjoyed by each joint venture partner would be limited to the profits earned by the joint venture. As a result, no partner would profit at the joint venture's expense." *Ibid.* Accordingly, "the joint venture agreements forbade any partner from charging a 'mark-up' on technology procured from a third party and sublicensed to the joint venture." *Ibid.* Nevertheless, when SABIC procured rights to the Unipol® process (a polyethylene manufacturing method licensed by Union Carbide Corporation) and sublicensed those rights to Yanpet and Kemya, it secretly added a substantial mark-up to the sublicense fees and continued to do so over about a twenty-year period. Pet. App. 4a-7a. ExxonMobil first discovered the mark-up in 2000. See Pet. App. 7a.

II. PROCEDURAL HISTORY IN DELAWARE STATE COURTS

Confronted with the discrepancy between its conduct of two decades and its obligations to its joint venture partners, SABIC preemptively raced to the Delaware courthouse and filed a declaratory judgment action, hoping to excise these claims from the New Jersey case and to avail itself of Delaware's three-year statute of limitations or, failing that, to secure a declaration that, under Saudi law, its overcharges did not subject it to any liability to ExxonMobil. Pet. App. 8a, 20a. ExxonMobil asserted counterclaims for damages and demanded a jury trial. Pet. App. 8a. All parties agreed that the dispute was governed by Saudi Arabian law. See, *e.g.*, Pet. 15.

In Saudi Arabia, Islamic law, or *shari'a*, is "the law of the land." Pet. App. 173a. Islamic law "is a fundamentally religious law based on both the *Quran* and the model behavior of the Prophet Muhammad (known as '*Sunna*')." Pet. App.